

**STATE OF TENNESSEE**

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Opinion No. 07-106

Budget Amendments in Blount County

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**QUESTION**

Blount County has adopted the Local Option Budgeting Law of 1993, Tenn. Code Ann. §§ 5-12-201, *et seq.*, and the County Financial Management System of 1981, Tenn. Code Ann. §§ 5-21-101, *et seq.* The Sheriff's Office operates under the County Sheriff's Civil Service Law of 1974, Tenn. Code Ann. §§ 8-8-401, *et seq.* Under § 8-8-412, the Civil Service Board in the Sheriff's Office may, upon the request and advice of the Sheriff, "create new positions or combine, alter or abolish existing positions in such manner as the board acting under the advice of the sheriff deems necessary for the effective operation of the office of sheriff. No position in the classified service shall be abolished except upon approval of the board acting in good faith upon the advice of the sheriff." Is the Sheriff, in reassigning employees and transferring funding from one major category appropriation to another, required to obtain the prior approval for the transfer of funds from the Financial Management Committee, the Blount County Commission, or both?

**OPINION**

Transfer of county funds between major appropriation categories as a result of personnel adjustments in the Sheriff's civil service system must be approved in accordance with applicable county budgeting statutes. Under Tenn. Code Ann. § 5-21-113, or Tenn. Code Ann. § 5-9-407, as modified by subsection (e)(2)(B), these transfers must be submitted to the committee exercising the functions of the Budget Committee for its recommendation to the County Mayor and the county legislative body. The amendment is not effective unless approved by the county legislative body.

**ANALYSIS**

This opinion concerns the interplay among three different local option acts: the County Sheriff's Civil Service Law of 1974, Tenn. Code Ann. §§ 8-8-401, *et seq.*; the Local Option Budgeting Law of 1993, Tenn. Code Ann. §§ 5-12-201, *et seq.*; and the County Financial Management System of 1981, Tenn. Code Ann. §§ 5-21-101, *et seq.*. These acts must be read together with Tenn. Code Ann. § 5-9-407 regarding amendments to the county budget.

The Sheriff's Civil Service Law appears at Tenn. Code Ann. §§ 8-8-401, *et seq.* This statute becomes effective when adopted by a two-thirds vote of a county legislative body. Tenn. Code Ann.

§ 8-8-402.<sup>1</sup> The act provides for the creation of a Civil Service Board to review matters pertaining to classified service in the Sheriff's Office. The Board is to adopt a classification plan regarding the Sheriff's Office and make rules for its administration. Tenn. Code Ann. § 8-8-411. Tenn. Code Ann. § 8-8-412 provides:

The board may, upon request of and by the advice of the sheriff, create new positions or combine, alter or abolish existing positions in such manner as the board acting under the advice of the sheriff deems necessary for the effective operation of the office of sheriff. No position in the classified service shall be abolished except upon approval of the board acting in good faith upon the advice of the sheriff.

The question is whether the Blount County Sheriff, in reassigning employees from one position to another and transferring the funding for such reassigned employee from one major category appropriation to another, must obtain the prior approval for the reassignment and transfer of funds from the Financial Management Committee, County Commission, or both.

The answer to this question requires an examination of the two local option laws cited in the request, as well as the general statute regarding budget amendments at Tenn. Code Ann. § 5-9-407. Blount County currently operates under the Local Option Budgeting Law of 1993, which appears at Tenn. Code Ann. §§ 5-12-201, *et seq.* The law applies only to a county that has adopted its provisions by a two-thirds vote of the County Commission. Tenn. Code Ann. § 5-12-201. Tenn. Code Ann. § 5-12-203 provides:

The provisions of this part apply to each department, office or agency funded, in whole or in part, from county appropriations. Nevertheless, with regard to entities receiving county funds pursuant to § 5-9-109, only the requested county appropriation and expenditures of county funds shall be included within the provisions of this part.

Tenn. Code Ann. § 5-12-205 provides:

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<sup>1</sup> A private act also applies to the Blount County Sheriff's Office. 1972 Tenn. Priv. Acts Ch. 332. This act has not been repealed. Because the request refers to the Sheriff's Civil Service Law, the opinion will address budgeting under that act. Section 10 of the private act provides:

The board may, upon request and advice of the sheriff, create new positions or combine, alter or abolish existing positions in such manner as the board, acting with the advice of the sheriff, deems necessary for the effective operation of the office of sheriff; provided, however, that no position in the classified service shall be abolished except upon approval of the board acting in good faith upon the advice of the sheriff.

This language is very similar to that of Tenn. Code Ann. § 8-8-412.

*If a county included in this part has adopted the County Financial Management System of 1981, compiled in chapter 21 of this title, the County Budgeting Law of 1957, compiled in part 1 of this chapter, or private acts, and such county does not revoke or repeal such act, in the event of a conflict between the provisions of this part and the provisions of such acts, the provisions of this part shall **not** supersede those provisions, except that the provisions of § 5-12-210 shall supersede any other law.*

(Emphasis added). Tenn. Code Ann. § 5-12-210 addresses adoption of the budget, the tax rate, and appropriation resolution. Tenn. Code Ann. § 5-12-213 addresses amendments to the county budget. The statute provides in relevant part:

(a)(1) Amendments to line items within a major category of the budget may be made by the official or department head of the office or department whose budget is to be amended, including those county officials named in § 5-12-211 [including the sheriff], and by the assessor of property, upon written notice to the county mayor and the county legislative body. Any line item amendment that in any way affects amounts budgeted for personnel costs, however, shall require approval of the county mayor to be effective, or if the county mayor disapproves or fails to take action on the amendment within seven (7) calendar days after written submission of the amendment, the county legislative body may approve the amendment by a two-thirds (2/3) vote.

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(3) When the budget has been adopted, whether by action of the county legislative body or by operation of law, amendments to major categories of the budget may be made with the approval of the county mayor and passage of the amendment by a majority vote of the county legislative body. If amendments to the major appropriation categories of the budget are not approved by the county mayor, or the county mayor fails to take action on the amendment within seven (7) calendar days after written submission of the amendment to the county mayor, such amendment may be subsequently approved by a two-thirds (2/3) vote of the county legislative body. The amendments to major categories of the budget must be submitted in writing to the county mayor and the county legislative body and shall specify the following:

(A) A description of the amendment, including the purpose of the amendment and why it is needed during the current fiscal year;

(B) A statement showing the cost of the amendment by budget line item with subclassifications showing specific cost elements (personnel, salaries, equipment, etc., included in the line item); and

(C) Funding sources for the expenditure itemized by federal sources, state sources, local sources or fund balance.

The Blount County Commission also adopted the County Financial Management System of 1981 on January 20, 2005, to go into effect July 1, 2005. The County Financial Management System of 1981 appears at Tenn. Code Ann. §§ 5-21-101, *et seq.* This law is also in effect only in counties where it has been approved by a two-thirds vote of the County Commission or a majority of voters in an election held for the purpose of approving it. Tenn. Code Ann. § 5-21-126. The act provides:

Upon ratification by the county legislative body or the people in a referendum and the full implementation of the chapter's provisions on or before August 1 of the second fiscal year, *the operation of all private or local acts relative to county finances, budgeting, and purchasing in conflict with this chapter are suspended until such time as the provisions of this chapter are revoked as provided in § 5-21-129.*

Tenn. Code Ann. § 5-21-128 (emphasis added). Under this statute and Tenn. Code Ann. § 5-12-205, therefore, to the extent the Local Budget Law of 1993 conflicts with the 1981 act regarding budget amendments, it is suspended.

The 1981 act creates a Finance Department to administer finances for all funds of the county departments, agencies and boards that are handled by the County Trustee. Tenn. Code Ann. § 5-21-103(a)(1). Subdivision (a)(2) of the statute provides:

The accounting, bank accounts, personnel and salary policies, and other policies of the funds and offices of the clerks of courts, county clerk, register of deeds, *sheriff and trustee, that were not subject to the budgeting authority of the county legislative body prior to application of this part, are not subject to the provisions of this part.* This part shall not be construed as authority over the fee and commission accounts of other accounts that are not handled by the trustee for offices other than the trustee nor for the trustee's fee and commission account. This part shall not be construed as authority over personnel policies or procedures or salaries of the various county offices or departments, except with respect to requiring necessary recordkeeping and reporting needed for performing the payroll functions as prescribed by the finance committee.

Tenn. Code Ann. § 5-21-103(a)(2) (emphasis added). We assume that the Sheriff's Office was subject to the budgeting authority of the County Commission before Blount County adopted the County Financial Management System of 1981. For this reason, funding transfers required by personnel transfers or other changes must comply with applicable requirements for amendments to the county budget specified elsewhere in the 1981 act.

The 1981 act also establishes a County Financial Management Committee. Tenn. Code Ann. § 5-21-104. The committee is to establish policies for implementing a sound and efficient financial system for administering the funds of the county. *Id.* The county legislative body may authorize this committee to assume the functions of a budget committee, an investment committee, or a

purchasing committee, or it may by resolution create separate committees. Tenn. Code Ann. § 5-21-105(a). The Budget Committee is to establish and approve policies, forms and documents, procedures, and regulations necessary for the preparation of the annual operating and capital improvement budgets. Tenn. Code Ann. § 5-21-105(d). Tenn. Code Ann. § 5-21-113 provides in relevant part:

(a) The appropriations made by the county legislative body shall constitute authorization for the expenditures contained therein unless otherwise limited by the county legislative body.

\* \* \* \*

(d) No expenditures made or obligations created in any manner shall be valid or binding against the county except as provided by the provisions of this chapter.

(e)(1) The budget committee, with the consent of any official, head of any department or division that may be affected, may make transfers and adjustments within the smallest budgetary itemization of any subdivision.

(2) Any other transfers or adjustments shall be submitted to the budget committee for its recommendation to the county legislative body.

(Emphasis added). Therefore, under the County Financial Management Act of 1981, specifically Tenn. Code Ann. § 5-21-113(e)(2), major amendments to the budget must be submitted to the Budget Committee for its recommendation to the County Commission. The County Commission must approve the amendment.

The County Financial Management Act of 1981 must also be read in conjunction with Tenn. Code Ann. § 5-9-407. This statute sets forth procedures for amending a county budget and applies in most counties, except those counties that exempted themselves from its provisions by the adoption of a resolution by December 31, 1991. Tenn. Code Ann. § 5-9-407(e)(1). Subsection (e)(2)(B) of the statute provides in addition:

*In any county subject to the provisions of this section that is under the provisions of chapter 21 of this title, in addition to the requirement of this section, an official or department head shall submit a budget request to the budget committee for its recommendations to the county mayor or county legislative body, or both, for approval.*<sup>2</sup>

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<sup>2</sup>Subparagraph (e)(2)(A) states that, “[i]n any county that has a private act *or has adopted chapter 12 of this title*, this section is *supplemental authority* for an amendment to the budget.” (Emphasis added). While Blount County has adopted chapter 12, it is now operating under Chapter 21. Subparagraph 5-9-407(e)(2)(B), therefore, governs the effect of the statute in Blount County.

Blount County does not fall within the counties exempted by population brackets under subdivision (g)(1) or (2) of the statute. Assuming Blount County did not exempt itself from this statute in 1991, Tenn. Code Ann. § 5-9-407, as modified by subdivision (e)(2)(B), thus applies to budget amendments in Blount County.

Tenn. Code Ann. § 5-9-407(b) provides:

(b) Once a budget has been adopted, the budget, including line items and major categories, may be amended by passage of an amendment by a majority of the members of the county legislative body. If an official or department head is requesting the budget amendment *and the amendment involves amendment of major categories of the budget, the request shall be submitted in writing to the county mayor and to each member of the county legislative body, and **must** be approved by the county legislative body in order to be effective.* The county mayor may make a recommendation to the county legislative body regarding the requested major category amendment. The written request may be on an amendment request form, if one is specified by the county mayor, otherwise such amendment request shall specify the following:

(1) A description of the amendment, including the purpose of the amendment and why it is needed during the current fiscal year;

(2) A statement showing the cost of the amendment by budget line item with subclassifications showing specific cost elements (personnel, salaries, equipment, etc., included in the line item); and

(3) Funding sources for the expenditure itemized by federal sources, state sources, local sources or fund balance.

(Emphasis added). Reading this subsection of Tenn. Code Ann. § 5-9-407 together with subsection (e)(2)(B) thereof, it appears that the Sheriff must submit the request to the Budget Committee for its recommendations to the County Mayor or county legislative body, or both, for approval. The County Mayor may also make a recommendation to the county legislative body with respect to the amendment. The requested amendment is not effective unless approved by the County Commission.

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